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September 12, 2003

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Federal Communications Commission
Office of Secretary

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Federal Communications Commission
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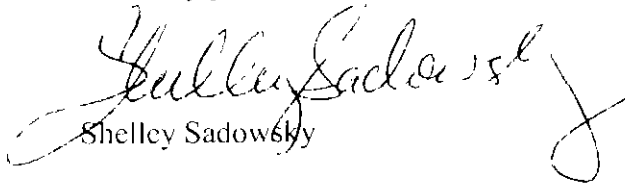
Re **EB Docket No. 03-152**
William L. Zawila, et al

Dear Madam Secretary

On behalf of William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a Lindsay Broadcasting and Western Pacific Broadcasting, Inc., parties in the above-referenced proceeding, I submit herewith an original and six copies of a Joint Motion to Strike Or, In The Alternative, Response To Consolidated Reply to Oppositions to Petition For Leave to Intervene

Please direct any questions concerning this matter to the undersigned

Sincerely yours,


Shelley Sadowsky

Counsel for William L. Zawila,
Avenal Educational Services, Inc
Central Valley Educational Services, Inc
H.L. Charles d/b/a Ford City Broadcasting,
Linda Ware d/b/a Lindsay Broadcasting
Western Pacific Broadcasting, Inc

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Federal Communications Commission
Office of Secretary

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

EB Docket No. 03-152

In the Matter of)	
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS,)	
Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES, INC.)	Facility ID No. 3365
)	
Permittee of FM Station KAAX,)	
Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL)	Facility ID No. 9993
SERVICES, INC.)	
)	
Permittee of FM Station KAJR,)	
Firebaugh, California)	
)	
H L CHARLES D/B/A FORD CITY)	Facility ID No. 22030
BROADCASTING)	
)	
Permittee of FM Station KZPE,)	
Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY)	Facility ID No. 37725
BROADCASTING)	
)	
Permittee of FM Station KZPO,)	
Lindsay, California)	
)	
In re Application of)	
)	
WESTERN PACIFIC BROADCASTING INC.)	File No. BR-19970804YJ
)	Facility ID No. 71936
For Renewal of License for AM Station KKFO,)	
Coalinga, California)	

TO The Honorable Arthur I. Steinberg
Administrative Law Judge

**JOINT MOTION TO STRIKE OR, IN THE ALTERNATIVE,
RESPONSE TO CONSOLIDATED REPLY TO OPPOSITIONS TO
PETITION FOR LEAVE TO INTERVENE**

William L. Zawila ("Zawila"), Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a Lindsay Broadcasting and Western Pacific Broadcasting, Inc. (collectively with Zawila, referred to as the "Parties" or "Zawila, et al."), by their undersigned counsel, hereby jointly move to strike the Consolidated Reply to Oppositions to Petition for Leave to Intervene and the Supplement thereto (together, the "Reply") filed by Richard B. Smith ("Smith") on September 11, 2003, in the above-captioned proceeding. In the alternative, the Parties oppose the Reply for the reasons that follow:

1. The Reply, clearly unauthorized under §1.294 of the Rules, is a blatant and transparent attempt by Smith's counsel to gain a second bite of the apple with respect to his meritless Petition for Leave to Intervene ("Petition"). Contrary to the vacuous claim made in Smith's Motion for Leave to File Reply, it is simply not the case that both the Enforcement Bureau and the Parties made incorrect assumptions as to the true nature of the Petition. Any objective reader of the Petition would conclude that discretionary intervention pursuant to §1.223(b) of the Rules was sought by Smith, not intervention as a matter of right pursuant to §1.223(a) of the Rules.

2. Clearly, the Petition was crafted solely to attempt to meet the criteria of §1.223(b) for discretionary intervention herein. Otherwise, why would the Petition, as well as Mr. Smith's accompanying declaration, have included statements as to Smith's belief that he will be able to assist materially in this hearing (see Petition at ¶3, Smith Statement at ¶ 7)? A petitioner requesting intervention as a matter of right under

§1 223(a) need not make such a showing, whereas a petitioner seeking discretionary intervention under §1.223(b) must do so, as Smith has attempted.

3 Moreover, why would the Petition have stated, “Smith is not aware at this time of any further issues which might be appropriately added with respect to Mr. Zawila, and Mr. Smith does not hereby propose the addition of any such issues” (Petition at ¶4), when only §1 223(b), not §1 223(a), requires a petitioner to address any additional issues that he proposes to add in the proceeding. Furthermore, if indeed Smith genuinely believed he was entitled, as a matter of right, to party status vis-à-vis Western Pacific Broadcasting, Inc.’s Station KKFO, Coalinga, California - - the only station out of six in this proceeding which has a license renewal application at issue (as opposed to license revocation) - - why did the Petition only address Smith’s interests with respect to Station KNGS, as to which only discretionary intervention is available under §1.223(b)?

4. The issue here is simple and need not be belabored: The Petition plainly sought discretionary intervention pursuant to §1.223(b), and Smith should not be permitted now, in a hastily prepared, unauthorized Reply and Supplement, to disingenuously claim that what he really was asking for was intervention as a matter of right. The onus was on Smith initially to properly plead his case, and not come forward now in a johnny-come-lately attempt to concoct a new theory (and insult the intelligence of the Bureau, the Parties and the Presiding Judge in the process). The only red herring that has been flung into this proceeding is Smith’s odorous, belated argument contained *in his unauthorized Reply*. *The Presiding Judge should not countenance Smith’s obvious attempt to “get it right” the second time, particularly when the Petition itself belies all claims made in his Reply.* Smith’s unauthorized Reply therefore should be stricken.

5 Should the Presiding Judge consider Smith's Reply, the Parties offer the following in response to Smith's claim of entitlement to intervene as a matter of right. First, it is abundantly clear from the Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, FCC 03-158, released July 16, 2003 ("OSC/HDO"), herein that the Commission was fully cognizant of Smith and his pleadings relating to KNSD (see OSC/HDO, ¶¶ 3, 9, 10); yet, the Commission determined not to make Smith a party in the OSC/HDO. This plainly was no oversight on the part of the Commission. Smith simply has no legitimate claim to party status in this proceeding as a matter of right (or as a matter of discretion, as the Parties and the Bureau already demonstrated in their respective Oppositions to the Petition).

6 Smith now seeks to improperly bootstrap his way into this proceeding by untimely arguing that since Station KKFO's license renewal application was designated in this consolidated case, §1 223(a) automatically applies to his request for party-intervenor status. Nothing could be further from the truth. Importantly, Smith never filed any pleading with the Commission relating to the license renewal of KKFO or its operational status. As already admitted in Smith's Petition, his sole focus, both in his pleadings and insofar as his claim of economic interest is concerned, has been the hoped for revocation of the KNGS construction permit. The Reply wholly ignores the salient fact that no nexus has ever been demonstrated between Smith and KKFO, either in pleadings below or in the Petition.

7 Rather, the Reply attempts to tie KNGS with KKFO by engaging in wholly improper, vitriolic arguments about Mr. Zawila's purported relationship to KKFO and other stations, in which unproven accusations about Mr. Zawila are bandied about as if they were record facts. Yet, in the end, the Reply provides no support whatsoever for

Smith's erroneous theory that the inclusion herein of the KKFO renewal application, in which he has previously never expressed an interest, somehow entitles him to party status as a matter of right under §1 223(a). In fact, the decisions that Smith cites in "hybrid" cases undercut, instead of support, his argument.

8 In Algreg Cellular Engineering, 6 FCC Rcd 5299 (Rev. Bd 1991), the consolidated hearing was to determine whether certain applicants that had won FCC lotteries for cellular authorizations should be disqualified, and whether certain cellular authorizations issued to other entities should be revoked. The Review Board conferred party status upon an entity that had cellular applications pending before the Commission. But, the Board concluded that the petitioner was entitled to intervene as a matter of right under §1 223(a) only with respect to the party applicants (not the party authorization holders who were subject to possible revocation). The Board observed that if the various party applicants were disqualified from becoming licensees, the petitioner would be part of the applicant pool in a lottery from which new tentative selectees for the same cellular authorizations would be chosen. If, on the other hand, the party applicants were deemed qualified to hold licenses, the petitioner's pending cellular applications would be dismissed and the petitioner would suffer economic injury. Hence, the petitioner qualified as a party interest vis-à-vis the applicants under these circumstances. However, quoting from Victor Muscat, et al., 31 FCC 2d 620,621 (see quote in Parties Joint Opposition to Petition for Leave to Intervene at ¶1) and noting that the petitioner had not even attempted to make the special showing required by §1.223(b) of the Rules, the Board expressly denied party status to the petitioner vis-à-vis the party authorization holders facing possible revocation.

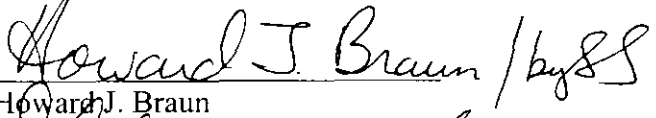
9 From Algreg, it is clear that whether and to what extent a petitioner is entitled to intervene in a “hybrid” case turns on (1) the petitioner’s proven interest vis-à-vis the designated parties and (2) whether the designated parties are applicants or licensees facing possible revocation. Unlike the petitioner in Algreg, Smith failed to articulate any interest whatsoever in KKFO or its licensee, Western Pacific Broadcasting, Inc , that would even arguably rise to the level of party status as a matter of right under §1.223(a). No economic harm or other adverse impact was ever cited by Smith in the event KKFO’s application for license renewal was granted. Thus, Smith cannot rely on Algreg to buttress his specious claim to party status as a matter of right

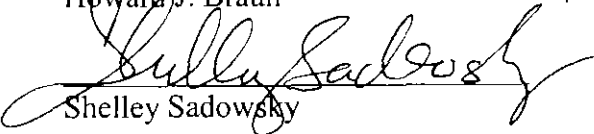
10 Similarly, the HDO issued in Gerard A. Turro, et al , 12 FCC Rcd 6264 (1997), provides no comfort to Smith. That proceeding involved issues pertaining to whether licenses of a FM translator operator should be renewed and whether an FM station construction permit, whose permittee was in contractual privity with the translator operator, should be revoked. The HDO conferred party status upon a licensee that had filed petitions to deny against the translator license renewal applications and applications to assign the translator licenses to a third party. While not expressly articulated in the HDO, it is apparent that the party in Turro, unlike Smith, had satisfactorily demonstrated in its petitions below the requisite standing as a party in interest in connection with the translator’s pending applications - - thus clearly placing it within the ambit of §1 223(a) had the HDO not conferred party status. Smith, however, as shown above, has never articulated any interest whatsoever in connection with the single KKFO application designated herein. Therefore, his claim to party status cannot be cognizable under §1 223(a), but must be judged by the standards of §1.223(b) for discretionary

intervention. The Parties and the Bureau already have amply demonstrated in their Oppositions that Smith utterly failed to meet that criteria.

WHEREFORE, Smith's unauthorized Reply should be stricken and the Petition expeditiously dismissed and/or denied.

Respectfully submitted,


Howard J. Braun


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d/b/a Ford City Broadcasting, Linda Ware
d/b/a Lindsay Broadcasting, Western Pacific
Broadcasting Inc.

September __, 2003

CERTIFICATE OF SERVICE

I, Karen R. Kelly, a secretary at Katten Muchin Zavis Rosenman, hereby certify that on this 12th day of September 2003, a copy of the foregoing **JOINT MOTION TO STRIKE OR IN THE ALTERNATIVE RESPONSE TO CONSOLIDATED REPLY TO OPPOSITIONS TO PETITION FOR LEAVE TO INTERVENE** was sent via fax or first-class-mail to the following

The Honorable Arthur I. Steinberg*
Administrative Law Judge
Federal Communications Commission
445 Twelfth St , S.W.
Room 1-C861
Washington, D C 20554

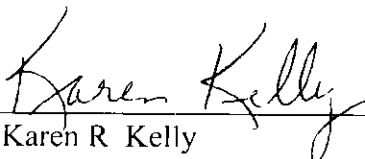
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* Date-stamped copy to be provided via fax on September 15, 2003.

** By e-mail only

*** By first-class mail



Karen R Kelly